



## Senate

General Assembly

**File No. 239**

*January Session, 2001*

Substitute Senate Bill No. 1054

*Senate, April 11, 2001*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT CONCERNING CONTRACT COMPLIANCE PROCEDURES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 46a-56 of the general statutes is  
2 repealed and the following is substituted in lieu thereof:

3 (c) If the commission determines through its [complaint] contract  
4 compliance procedure that a contractor or subcontractor is not  
5 complying with antidiscrimination statutes or contract provisions  
6 required under section 4a-60 or 4a-60a or the provisions of section 46a-  
7 68c, 46a-68d, as amended by this act, 46a-68e or 46a-68f, [(A)] (1) the  
8 state shall retain two per cent of the total contract price per month on  
9 any existing contract with such contractor, and [(B)] (2) the contractor  
10 shall be prohibited from participation in any further contracts with  
11 state agencies until: [(i)] (A) The expiration of a period of two years  
12 from the date of the finding of noncompliance, or [(ii)] (B) the  
13 commission determines that the contractor has adopted policies  
14 consistent with such statutes. The commission shall make such a

15 determination as to whether the contractor has adopted such policies  
16 within forty-five days of its determination of noncompliance. In  
17 addition, the commission may do one or more of the following: [(1)] (i)  
18 Publish or cause to be published, the names of contractors or unions  
19 which it has found to be in noncompliance with such provisions; [(2)]  
20 (ii) notify the attorney general that, in cases in which there is  
21 substantial or material violation or the threat of substantial or material  
22 violation of the contractual provisions set forth in section 4a-60 or 4a-  
23 60a, appropriate proceedings should be brought to enforce those  
24 provisions, including the enjoining, within the limitations of applicable  
25 law, of organizations, individuals or groups who prevent directly or  
26 indirectly, or seek to prevent directly or indirectly, compliance with  
27 the provisions of said section 4a-60 or 4a-60a; [(3)] (iii) recommend to  
28 the Equal Employment Opportunity Commission or the Department of  
29 Justice that appropriate proceedings be instituted under Title VII of the  
30 Civil Rights Act of 1964, when necessary; [(4)] (iv) recommend to the  
31 appropriate prosecuting authority that criminal proceedings be  
32 brought for the furnishing of false information to any contracting  
33 agency or to the commission as the case may be; [(5)] (v) order the  
34 contracting agency to refrain from entering into further contracts, or  
35 extension or other modifications of existing contracts, with any  
36 noncomplying contractor, until such contractor has satisfied the  
37 commission that such contractor has established and will carry out  
38 personnel and employment policies in compliance with  
39 antidiscrimination statutes and provisions of section 4a-60 or 4a-60a  
40 and sections 46a-68c to 46a-68f, inclusive. Any order of the commission  
41 pursuant to subparagraph (B)(v) of subdivision (2) of this subsection  
42 shall inform the contractor that such contractor may request a hearing  
43 pursuant to section 46a-68h, as amended by this act. The commission  
44 shall adopt regulations in accordance with chapter 54 to implement the  
45 provisions of this section.

46 Sec. 2. Subsection (d) of section 46a-56 of the general statutes is  
47 repealed and the following is substituted in lieu thereof:

48 (d) If the commission determines through its [complaint] contract  
49 compliance procedure and after a hearing held in accordance with  
50 chapter 54 that, with respect to a state contract, a contractor,  
51 subcontractor or supplier of materials has (1) fraudulently qualified as  
52 a minority business enterprise, or (2) performed services or supplied  
53 materials on behalf of another contractor, subcontractor or supplier of  
54 materials knowing (A) that such other contractor, subcontractor or  
55 supplier has fraudulently qualified as a minority business enterprise in  
56 order to comply with antidiscrimination statutes or contract provisions  
57 required under section 4a-60 or 4a-60a, and (B) that such services or  
58 materials are to be used in connection with a contract entered into  
59 pursuant to subsection (b) of section 4a-60g it shall assess a civil  
60 penalty of not more than ten thousand dollars upon such contractor,  
61 subcontractor or supplier of materials. The Attorney General, upon  
62 complaint of the commission, shall institute a civil action in the  
63 superior court for the judicial district of Hartford to recover such  
64 penalty. Any penalties recovered shall be deposited in a special fund  
65 and shall be held by the Treasurer separate and apart from all other  
66 moneys, funds and accounts. The resources in such fund shall,  
67 pursuant to regulations adopted by the commission in accordance with  
68 the provisions of chapter 54, be used to assist minority business  
69 enterprises. As used in this section, "minority business enterprise"  
70 means any contractor, subcontractor or supplier of materials fifty-one  
71 per cent or more of the capital stock, if any, or assets of which is owned  
72 by a person or persons: [(1)] (i) Who are active in the daily affairs of the  
73 enterprise; [(2)] (ii) who have the power to direct the management and  
74 policies of the enterprise; and [(3)] (iii) who are members of a minority,  
75 as such term is defined in subsection (a) of section 32-9n.

76 Sec. 3. Section 46a-68d of the general statutes is repealed and the  
77 following is substituted in lieu thereof:

78 In addition to the provisions of section 4a-60, every public works  
79 contract [subject to the provisions of part II of chapter 60] in excess of

80 five hundred thousand dollars in any fiscal year shall also be subject to  
81 the provisions of this section. After a [bid] proposal has been accepted  
82 but before a contract is awarded, the successful [bidder] contractor  
83 shall file and have approved by the commission an affirmative action  
84 plan. The commission may provide for conditional acceptance of an  
85 affirmative action plan provided written assurances are given by the  
86 contractor that it will amend its plan to conform to affirmative action  
87 requirements. The state shall withhold two per cent of the total  
88 contract price per month from any payment made to such contractor  
89 until such time as the contractor has developed an affirmative action  
90 plan, and received the approval of the commission. Notwithstanding  
91 the provisions of this section, a contractor subject to the provisions of  
92 this section may file a plan in advance of or at the same time as its [bid]  
93 proposal. The commission shall review plans submitted pursuant to  
94 this section within sixty days of receipt and either approve, approve  
95 with conditions or reject such plan. When the commission approves an  
96 affirmative action plan pursuant to this section, it shall issue a  
97 certificate of compliance to the contractor as provided in section 46a-  
98 68c.

99 Sec. 4. Section 46a-68h of the general statutes is repealed and the  
100 following is substituted in lieu thereof:

101 If the commission issues an order pursuant to [subdivision (5)]  
102 subparagraph (B)(v) of subdivision (2) of subsection (c) of section 46a-  
103 56, as amended by this act, the contractor or subcontractor may request  
104 a hearing within fifteen days of receipt of such order to allow such  
105 contractor or subcontractor to show cause why the commission's order  
106 should not be implemented. Upon receipt of a request for a hearing,  
107 the commission shall appoint a hearing officer or human rights referee  
108 pursuant to the procedures adopted by the commission. Any hearing  
109 requested pursuant to this section shall be conducted in accordance  
110 with the provisions of sections 4-177 to 4-182, inclusive.

111      Sec. 5. This act shall take effect July 1, 2001.

***Statement of Legislative Commissioners:***

Section 4 was added for accuracy.

***JUD      JOINT FAVORABLE SUBST.***

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Affected Agencies:** Commission on Human Rights and Opportunities

**Municipal Impact:** None

**Explanation****State Impact:**

The bill authorizes a contractor to request a hearing with the Commission on Human Rights and Opportunities if the contractor or subcontractor is found in violation of the antidiscrimination statutes and is subject to the requirements specified in the statute.

There will be no fiscal impact for the Commission on Human Rights and Opportunities as a result of this bill. The commission allows hearings for these violations at the present time. The bill conforms an existing practice to the statutes.

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**OLR Bill Analysis**

sSB 1054

***AN ACT CONCERNING CONTRACT COMPLIANCE PROCEDURES.*****SUMMARY:**

By law, the Commission on Human Rights and Opportunities (CHRO) is generally responsible for determining whether contractors with the state comply with the state's anti-discrimination statutes, required contract provisions, and contract compliance provisions.

This bill abbreviates the process CHRO must follow to determine that a contractor is noncompliant and thus subject to sanctions. Instead of CHRO making two determinations, one at the end of its contract compliance proceedings and another at the end of its complaint proceedings, the bill requires it to make only the first one. This "new" process eliminates (1) CHRO's duty, in most cases, to conduct a hearing before sanctions are imposed for noncompliance and (2) the contractor's right to appeal (see COMMENT). This process also makes it impossible for the sanctions to be imposed outside of the contract compliance process.

The bill also eliminates the opportunity for the commission to determine, through its complaint proceedings, whether a contractor has (1) falsely qualified as a minority business enterprise or (2) performed services for another person knowing that he falsely qualified as a minority business enterprise and that the services are to be used in connection with a contract awarded under the minority set-aside program. The bill instead requires the commission to make this determination after a hearing following its contract compliance proceedings.

Lastly, the bill extends to all contractors on state public works projects over \$500,000 a requirement to have their affirmative action plan approved by the CHRO.

EFFECTIVE DATE: July 1, 2001

## **DETERMINATION OF NONCOMPLIANCE AND RESULTING SANCTIONS**

By law, a CHRO determination that a contractor is noncompliant triggers certain sanctions. The bill allows CHRO to make what is now an initial determination a final one. This action subjects noncompliant contractors to the following mandatory sanctions without a hearing:

1. a ban on them participating in future contracts for two years or until they comply and
2. retention by the state of two percent of the total contract price on any existing contract.

Additionally, CHRO may do one or more of the following:

1. publish the contractor's name as someone not in compliance with state law,
2. notify the attorney general that appropriate proceedings should be brought if there is a material or substantial violation of the contractual provisions,
3. recommend to the Equal Employment Opportunity Commission that appropriate proceedings be instituted under Title VII,
4. recommend that the contractor be prosecuted for giving false information to the contracting agency or the commission, or
5. order the contracting agency to refrain from entering future contracts or modifying or extending existing contracts with the contractor.

The bill requires CHRO, in any order regarding future contracts, to inform the contractor of his right to request a hearing. By law, the contractor must make the request within 15 days after he receives the order.



**AFFIRMATIVE ACTION PLAN SUBJECT TO CHRO REVIEW**

The bill requires contractors who are awarded the following public works contracts valued at over \$500,000 to submit their affirmative action plan to CHRO for approval: (1) Department of Public Works (DPW) design-build projects; (2) special state projects, such as correctional facility and juvenile detention center projects; (3) Department of Transportation (DOT) projects (However CHRO and DOT currently operate under a Memorandum of Understanding that allows DOT, rather than CHRO, to make compliance determinations regarding DOT projects); and (4) projects managed by political subdivisions, other than municipalities. Under current law, unchanged by the bill, contractors with 50 or more employees who are awarded public works contracts over \$50,000 in any fiscal year must have CHRO approve their affirmative action plan.

**BACKGROUND*****Contract Compliance Proceedings***

CHRO sends the contractors a contract monitoring report form, which they complete and return within 30 days, unless CHRO grants an extension. The contractor must use the form to report his employment practices and procedure. Upon receipt of the form, CHRO:

1. conducts a desk audit review,
2. conducts a field review if necessary,
3. completes a performance review, and
4. issues a certificate of compliance or a notice of noncompliance, depending on the circumstances.

CHRO includes in any letter of noncompliance suggested steps to achieve compliance. It follows up with a letter of agreement to achieve compliance with the contractor. If the contractor does not achieve compliance within a specified period, CHRO can file a complaint and; thus, begin its complaint procedure (Agency Regs. § 46a-68j-21 et. seq.)

**Contract Compliance Requirements**

By law, state contracts must contain provisions prohibiting discrimination and requiring contractors to (1) state in their employment solicitations that they are affirmative action and equal opportunity employers, (2) give unions and other worker representatives with who the contractor has a collective bargaining agreement or other understanding a notice of its commitment to anti-discrimination and affirmative action, (3) comply with CHRO's contract compliance procedures, (4) provide CHRO with information and allow record access, and (5) make a good faith effort to hire minority enterprises as subcontractors if the contract involves a public works project.

**Design-Build Projects**

The DPW commissioner may negotiate contracts on these projects to a single contractors most qualified to perform all phases of the work (i.e., design and build) without going through the formal bidding process.

**COMMENT*****Imposition of Sanctions Without Due Process***

The bill appears to violate contractors' procedural due process rights by allowing for the imposition of sanctions without a hearing and without the right to appeal from the determination. (The current complaint procedure provides for a hearing and right to appeal.) The federal and state constitutions guarantee individuals the right to notice and an opportunity for a hearing before being deprived of a liberty or property interest. To possess a property interest a person must have more than an expectation of it. He must have a legitimate claim of entitlement to it (*D'Amico v. Johnson*, 53 Conn. App. 855 (1999)).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 36      Nay 0